

Introduced by Senator AshburnFebruary 26, 2009

An act to add Sections 17053.49 and 23649 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 445, as introduced, Ashburn. Income and corporation taxes: credit: manufacturer's investment.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, for taxable years beginning on or after January 1, 2009, allow a credit against the taxes imposed by those laws in an amount equal to 6% of the amount paid or incurred by the taxpayer during the taxable year for qualified property, as defined, that is placed in service in this state.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17053.49 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.49. (a) For taxable years beginning on or after January
- 4 1, 2009, a qualified taxpayer shall be allowed a credit against the
- 5 "net tax," as defined in Section 17039, an amount equal to 6 percent
- 6 of the qualified cost of qualified property that is placed in service
- 7 in this state.

(b) For purposes of this section, “qualified cost” means any cost that satisfies each of the following conditions:

(1) Is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 2009.

(2) Except as provided in paragraph (3) of subdivision (d) and subparagraph (B) of paragraph (4) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(3) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(c) (1) For purposes of this section, “qualified taxpayer” means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the North American Industrial Classification (NAICS) Manual published by the United States Office of Management and Budget, 2007 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23649 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term “passthrough entity” means any partnership or “S” corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, “qualified property” means property that is described as any of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the North American Industrial Classification (NAICS) Manual published by the United States Office of Management and Budget, 2007 edition, that is primarily used for any of the following:

1 (A) For the manufacturing, processing, refining, fabricating, or
2 recycling of property, beginning at the point at which any raw
3 materials are received by the qualified taxpayer and introduced
4 into the process and ending at the point at which the manufacturing,
5 processing, refining, fabricating, or recycling has altered tangible
6 personal property to its completed form, including packaging, if
7 required.

8 (B) In research and development.

9 (C) To maintain, repair, measure, or test any property described
10 in this paragraph.

11 (D) For pollution control that meets or exceeds standards
12 established by the state or by any local or regional governmental
13 agency within the state.

14 (E) For recycling.

15 (2) Computers and computer peripheral equipment, as defined
16 in Section 168(i)(2)(B) of the Internal Revenue Code, that is
17 tangible personal property as defined in Section 1245(a) of the
18 Internal Revenue Code for use by a qualified taxpayer in those
19 lines of business described in Sector 334 of the NAICS Manual,
20 2007 edition, that is primarily used to develop or manufacture
21 prepackaged software or custom software prepared to the special
22 order of the purchaser who uses the program to produce and sell
23 or license copies of the program as prepackaged software.

24 (3) The value of any capitalized labor costs that are directly
25 allocable to the construction or modification of property described
26 in paragraph (1) or (2).

27 (4) In the case of any qualified taxpayer engaged in
28 manufacturing activities related to biotechnology, those activities
29 related to biopharmaceutical establishments, those activities related
30 to space vehicles and parts, those activities related to space
31 satellites and communications satellites and equipment described
32 in NAICS Code 51741, or those activities related to semiconductor
33 equipment manufacturing “qualified property” also includes the
34 following:

35 (A) Special purpose buildings and foundations that are
36 constructed or modified for use by the qualified taxpayer primarily
37 in a manufacturing, processing, refining, or fabricating process,
38 or as a research or storage facility primarily used in connection
39 with a manufacturing process.

1 (B) The value of any capitalized labor costs that are directly
2 allocable to the construction or modification of special purpose
3 buildings and foundations that are used primarily in the
4 manufacturing, processing, refining, or fabricating process, or as
5 a research or storage facility primarily used in connection with a
6 manufacturing process.

7 (C) (i) For purposes of this paragraph, “special purpose building
8 and foundation” means only a building and the foundation
9 immediately underlying the building that is specifically designed
10 and constructed or reconstructed for the installation, operation,
11 and use of specific machinery and equipment with a special
12 purpose, which machinery and equipment, after installation, will
13 become affixed to or a fixture of the real property, and the
14 construction or reconstruction of which is specifically designed
15 and used exclusively for the specified purposes as set forth in
16 subparagraph (A) (“qualified purpose”).

17 (ii) A building is specifically designed and constructed or
18 modified for a qualified purpose if it is not economical to design
19 and construct the building for the intended purpose and then use
20 the structure for a different purpose.

21 (iii) For purposes of clause (i) and clause (vi), a building is used
22 exclusively for a qualified purpose only if its use does not include
23 a use for which it was not specifically designed and constructed
24 or modified. Incidental use of a building for nonqualified purposes
25 does not preclude the building from being a special purpose
26 building. “Incidental use” means a use that is both related and
27 subordinate to the qualified purpose. It will be conclusively
28 presumed that a use is not subordinate if more than one-third of
29 the total usable volume of the building is devoted to a use that is
30 not a qualified purpose.

31 (iv) In the event an entire building does not qualify as a special
32 purpose building, a taxpayer may establish that a portion of a
33 building, and the foundation immediately underlying the portion,
34 qualifies for treatment as a special purpose building and foundation
35 if the portion satisfies all of the definitional provisions in this
36 subparagraph.

37 (v) To the extent that a building is not a special purpose building
38 as defined above, but a portion of the building qualifies for
39 treatment as a special purpose building, then all equipment that
40 exclusively supports the qualified purpose occurring within that

1 portion and that would qualify as Internal Revenue Code Section
2 1245 property if it were not a fixture or affixed to the building
3 shall be treated as a cost of the portion of the building that qualifies
4 for treatment as a special purpose building.

5 (vi) Buildings and foundations that do not meet the definition
6 of a special purpose building and foundation set forth above
7 include, but are not limited to: buildings designed and constructed
8 or reconstructed principally to function as a general purpose
9 manufacturing, industrial, or commercial building; research
10 facilities that are used primarily prior to or after, or prior to and
11 after, the manufacturing process; or storage facilities that are used
12 primarily prior to or after, or prior to and after, completion of the
13 manufacturing process. A research facility is not considered to be
14 used primarily prior to or after, or prior to and after, the
15 manufacturing process if its purpose and use relate exclusively to
16 the development and regulatory approval of the manufacturing
17 process for specific biopharmaceutical products. A research facility
18 that is used primarily in connection with the discovery of an
19 organism from which a biopharmaceutical product or process is
20 developed does not meet the requirements of the preceding
21 sentence.

22 (5) Subject to the provisions in paragraph (2) of subdivision
23 (b), qualified property also includes computer software that is
24 primarily used for those purposes set forth in paragraph (1) or (2)
25 of this subdivision.

26 (6) Qualified property does not include any of the following:

27 (A) Furniture.

28 (B) Facilities used for warehousing purposes after completion
29 of the manufacturing process.

30 (C) Inventory.

31 (D) Equipment used in the extraction process.

32 (E) Equipment used to store finished products that have
33 completed the manufacturing process.

34 (F) Any tangible personal property that is used in administration,
35 general management, or marketing.

36 (e) For purposes of this section:

37 (1) “Biopharmaceutical activities” means those activities that
38 use organisms or materials derived from organisms, and their
39 cellular, subcellular, or molecular components, in order to provide
40 pharmaceutical products for human or animal therapeutics and

1 diagnostics. Biopharmaceutical activities make use of living
2 organisms to make commercial products, as opposed to
3 pharmaceutical activities that make use of chemical compounds
4 to produce commercial products.

5 (2) “Fabricating” means to make, build, create, produce, or
6 assemble components or property to work in a new or different
7 manner.

8 (3) “Manufacturing” means the activity of converting or
9 conditioning property by changing the form, composition, quality,
10 or character of the property for ultimate sale at retail or use in the
11 manufacturing of a product to be ultimately sold at retail.
12 Manufacturing includes any improvements to tangible personal
13 property that result in a greater service life or greater functionality
14 than that of the original property.

15 (4) “Other biotechnology activities” means activities consisting
16 of the application of recombinant DNA technology to produce
17 commercial products, as well as activities regarding pharmaceutical
18 delivery systems designed to provide a measure of control over
19 the rate, duration, and site of pharmaceutical delivery.

20 (5) “Primarily” means tangible personal property used 50 percent
21 or more of the time in an activity described in subdivision (d).

22 (6) “Process” means the period beginning at the point at which
23 any raw materials are received by the qualified taxpayer and
24 introduced into the manufacturing, processing, refining, fabricating,
25 or recycling activity of the qualified taxpayer and ending at the
26 point at which the manufacturing, processing, refining, fabricating,
27 or recycling activity of the qualified taxpayer has altered tangible
28 personal property to its completed form, including packaging, if
29 required. Raw materials are considered to have been introduced
30 into the process when the raw materials are stored on the same
31 premises where the qualified taxpayer’s manufacturing, processing,
32 refining, or recycling activity is conducted. Raw materials that are
33 stored on premises other than where the qualified taxpayer’s
34 manufacturing, processing, refining, fabricating, or recycling
35 activity is conducted, are not considered to have been introduced
36 into the manufacturing, processing, refining, fabricating, or
37 recycling process.

38 (7) “Processing” means the physical application of the materials
39 and labor necessary to modify or change the characteristics of
40 property.

(8) “Refining” means the process of converting a natural resource to an intermediate or finished product.

(9) “Research and development” means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) “Small business” means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars (\$50,000,000).

(B) Has net assets of less than fifty million dollars (\$50,000,000).

(C) Has a total credit of less than one million dollars (\$1,000,000).

(D) Is engaged in biopharmaceutical activities or other biotechnology activities, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, is not allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules apply:

(i) Except as provided by subparagraph (C) of this paragraph, paragraphs (1) and (3) of subdivision (b) do not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the “qualified cost” upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 18031) of the qualified property that is the subject of the lease.

(iii) The requirement of paragraph (2) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the

1 purchase price of the qualified property (within the meaning of
2 paragraph (5) of subdivision (g) of Section 6006). For purposes
3 of this subdivision, the amount of original cost to the lessor that
4 may be taken into account under clause (ii) may not exceed the
5 purchase price upon which sales tax reimbursement or use tax has
6 been paid under the preceding sentence.

7 (B) For purposes of applying subparagraph (A) only, the
8 following special rules shall apply:

9 (i) The original cost to the lessor of the qualified property shall
10 be reduced by the amount of any original cost of that property that
11 was taken into account by any predecessor lessee in computing
12 the credit allowable under this section.

13 (ii) Clause (i) does not apply in any case where the predecessor
14 lessee was required to recapture the credit provided under this
15 section pursuant to subdivision (g).

16 (iii) For purposes of this section only, in any case where a
17 successor lessor has acquired qualified property from a predecessor
18 lessor in a transaction not treated as a sale under Part 1
19 (commencing with Section 6001), the original cost to the successor
20 lessor of the qualified property shall be reduced by the amount of
21 the original cost of the qualified property that was taken into
22 account by any lessee of the predecessor lessor in computing the
23 credit allowable under this section.

24 (C) In determining the original cost of any qualified property
25 under this paragraph, only amounts paid or incurred by the lessor
26 on or after January 1, 2009, shall be taken into account.

27 (D) Notwithstanding subparagraph (A), in the case of any leasing
28 transaction for which the lessee is allowed the credit under this
29 section and thereafter the lessee (or any party related to the lessee
30 within the meaning of Section 267 or 318 of the Internal Revenue
31 Code) acquires the qualified property from the lessor (or any
32 successor lessor) within one year from the date the qualified
33 property is first used by the lessee under the terms of the lease, the
34 lessee's (or related party's) acquisition of the qualified property
35 from the lessor (or successor lessor) shall be treated as a disposition
36 by the lessee of the qualified property that was subject to the lease
37 under subdivision (g).

38 (3) For purposes of determining the qualified cost paid or
39 incurred by a lessee in any leasing transaction that is treated as a

1 sale under Part 1 (commencing with Section 6001), the following
2 rules apply:

3 (A) Paragraph (1) of subdivision (b) is applied by substituting
4 the term “purchase” for the term “construction, reconstruction, or
5 acquisition.”

6 (B) Paragraph (3) of subdivision (b) applies.

7 (C) The requirement of paragraph (2) of subdivision (b) are
8 treated as satisfied at the time that either the lessor or the qualified
9 taxpayer pays sales or use tax under Part 1 (commencing with
10 Section 6001).

11 (4) (A) In the case of any leasing transaction described in
12 paragraph (2), the lessor shall provide a statement to the lessee
13 specifying the amount of the lessor’s original cost of the qualified
14 property and the amount of that cost upon which a sales or use tax
15 was paid within 45 days after the close of the lessee’s taxable year
16 in which the credit is allowable to the lessee under this section.

17 (B) The statement required under subparagraph (A) shall be
18 made available to the Franchise Tax Board upon request.

19 (g) No credit is allowed if the qualified property is removed
20 from the state, is disposed of to an unrelated party, or is used for
21 any purpose not qualifying for the credit provided in this section
22 in the same taxable year in which the qualified property is first
23 placed in service in this state. If any qualified property for which
24 a credit is allowed pursuant to this section is thereafter removed
25 from this state, disposed of to an unrelated party, or used for any
26 purpose not qualifying for the credit provided in this section within
27 one year from the date the qualified property is first placed in
28 service in this state, the amount of the credit allowed by this section
29 for that qualified property shall be recaptured by adding that credit
30 amount to the net tax of the qualified taxpayer for the taxable year
31 in which the qualified property is disposed of, removed, or put to
32 an ineligible use.

33 (h) In the case where the credit allowed by this section exceeds
34 the “net tax,” the excess may be carried over to reduce the “net
35 tax” in the following year, and succeeding years as follows:

36 (1) Except as provided in paragraph (2), for the seven succeeding
37 years if necessary, until the credit is exhausted.

38 (2) In the case of a small business, for the nine succeeding years,
39 if necessary, until the credit is exhausted.

SEC. 2. Section 23649 is added to the Revenue and Taxation Code, to read:

23649. (a) For taxable years beginning on or after January 1, 2009, a qualified taxpayer is allowed a credit against the “tax,” as defined in Section 23036, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(b) For purposes of this section, “qualified cost” means any cost that satisfies each of the following conditions:

(1) Is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 2009.

(2) Except as provided in paragraph (3) of subdivision (d) and subparagraph (B) of paragraph (4) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(3) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(c) (1) For purposes of this section, “qualified taxpayer” means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the North American Industrial Classification (NAICS) Manual published by the United States Office of Management and Budget, 2007 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level and any credit under this section or Section 17053.49 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term “passthrough entity” means any partnership or “S” corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, “qualified property” means property that is described as either of the following:

1 (1) Tangible personal property that is defined in Section 1245(a)
2 of the Internal Revenue Code for use by a qualified taxpayer in
3 those lines of business described in Codes 2011 to 3999, inclusive,
4 of the North American Industrial Classification (NAICS) Manual
5 published by the United States Office of Management and Budget,
6 2007 edition, that is primarily used for any of the following:

7 (A) For the manufacturing, processing, refining, fabricating, or
8 recycling of property, beginning at the point at which any raw
9 materials are received by the qualified taxpayer and introduced
10 into the process and ending at the point at which the manufacturing,
11 processing, refining, fabricating, or recycling has altered tangible
12 personal property to its completed form, including packaging, if
13 required.

14 (B) In research and development.

15 (C) To maintain, repair, measure, or test any property described
16 in this paragraph.

17 (D) For pollution control that meets or exceeds standards
18 established by the state or by any local or regional governmental
19 agency within the state.

20 (E) For recycling.

21 (2) Computers and computer peripheral equipment, as defined
22 in Section 168(i)(2)(B) of the Internal Revenue Code, that is
23 tangible personal property as defined in Section 1245(a) of the
24 Internal Revenue Code for use by a qualified taxpayer in those
25 lines of business described in Sector 334 of the NAICS Manual,
26 2007 edition, that is primarily used to develop or manufacture
27 prepackaged software or custom software prepared to the special
28 order of the purchaser who uses the program to produce and sell
29 or license copies of the program as prepackaged software.

30 (3) The value of any capitalized labor costs that are directly
31 allocable to the construction or modification of property described
32 in paragraph (1) or (2).

33 (4) In the case of any qualified taxpayer engaged in
34 manufacturing activities related to biotechnology, those activities
35 related to biopharmaceutical establishments, those activities related
36 to space vehicles and parts, those activities related to space
37 satellites and communications satellites and equipment, or those
38 activities related to semiconductor equipment manufacturing,
39 “qualified property” also includes the following:

1 (A) Special purpose buildings and foundations that are
2 constructed or modified for use by the qualified taxpayer primarily
3 in a manufacturing, processing, refining, or fabricating process,
4 or as a research or storage facility primarily used in connection
5 with a manufacturing process.

6 (B) The value of any capitalized labor costs that are directly
7 allocable to the construction or modification of special purpose
8 buildings and foundations that are used primarily in the
9 manufacturing, processing, refining, or fabricating process, or as
10 a research or storage facility primarily used in connection with a
11 manufacturing process.

12 (C) (i) For purposes of this paragraph, “special purpose building
13 and foundation” means only a building and the foundation
14 immediately underlying the building that is specifically designed
15 and constructed or reconstructed for the installation, operation,
16 and use of specific machinery and equipment with a special
17 purpose, which machinery and equipment, after installation, will
18 become affixed to or a fixture of the real property, and the
19 construction or reconstruction of which is specifically designed
20 and used exclusively for the specified purposes as set forth in
21 subparagraph (A) (“qualified purpose”).

22 (ii) A building is specifically designed and constructed or
23 modified for a qualified purpose if it is not economical to design
24 and construct the building for the intended purpose and then use
25 the structure for a different purpose.

26 (iii) For purposes of clause (i) and clause (vi), a building is used
27 exclusively for a qualified purpose only if its use does not include
28 a use for which it was not specifically designed and constructed
29 or modified. Incidental use of a building for nonqualified purposes
30 does not preclude the building from being a special purpose
31 building. “Incidental use” means a use that is both related and
32 subordinate to the qualified purpose. It will be conclusively
33 presumed that a use is not subordinate if more than one-third of
34 the total usable volume of the building is devoted to a use that is
35 not a qualified purpose.

36 (iv) In the event an entire building does not qualify as a special
37 purpose building, a taxpayer may establish that a portion of a
38 building, and the foundation immediately underlying the portion,
39 qualifies for treatment as a special purpose building and foundation

1 if the portion satisfies all of the definitional provisions in this
2 subparagraph.

3 (v) To the extent that a building is not a special purpose building
4 as defined above, but a portion of the building qualifies for
5 treatment as a special purpose building, then all equipment that
6 exclusively supports the qualified purpose occurring within that
7 portion and that would qualify as Internal Revenue Code Section
8 1245 property if it were not a fixture or affixed to the building
9 shall be treated as a cost of the portion of the building that qualifies
10 for treatment as a special purpose building.

11 (vi) Buildings and foundations that do not meet the definition
12 of a special purpose building and foundation set forth above
13 include, but are not limited to: buildings designed and constructed
14 or reconstructed principally to function as a general purpose
15 manufacturing, industrial, or commercial building; research
16 facilities that are used primarily prior to or after, or prior to and
17 after, the manufacturing process; or storage facilities that are used
18 primarily prior to or after, or prior to and after, completion of the
19 manufacturing process. A research facility is not considered to be
20 used primarily prior to or after, or prior to and after, the
21 manufacturing process if its purpose and use relate exclusively to
22 the development and regulatory approval of the manufacturing
23 process for specific biopharmaceutical products. A research facility
24 that is used primarily in connection with the discovery of an
25 organism from which a biopharmaceutical product or process is
26 developed does not meet the requirements of the preceding
27 sentence.

28 (5) Subject to the provisions in paragraph (2) of subdivision
29 (b), qualified property also includes computer software that is
30 primarily used for those purposes set forth in paragraph (1) or (2)
31 of this subdivision.

32 (6) Qualified property does not include any of the following:

33 (A) Furniture.

34 (B) Facilities used for warehousing purposes after completion
35 of the manufacturing process.

36 (C) Inventory.

37 (D) Equipment used in the extraction process.

38 (E) Equipment used to store finished products that have
39 completed the manufacturing process.

1 (F) Any tangible personal property that is used in administration,
2 general management, or marketing.

3 (e) For purposes of this section:

4 (1) “Biopharmaceutical activities” means those activities that
5 use organisms or materials derived from organisms, and their
6 cellular, subcellular, or molecular components, in order to provide
7 pharmaceutical products for human or animal therapeutics and
8 diagnostics. Biopharmaceutical activities make use of living
9 organisms to make commercial products, as opposed to
10 pharmaceutical activities that make use of chemical compounds
11 to produce commercial products.

12 (2) “Fabricating” means to make, build, create, produce, or
13 assemble components or property to work in a new or different
14 manner.

15 (3) “Manufacturing” means the activity of converting or
16 conditioning property by changing the form, composition, quality,
17 or character of the property for ultimate sale at retail or use in the
18 manufacturing of a product to be ultimately sold at retail.
19 Manufacturing includes any improvements to tangible personal
20 property that result in a greater service life or greater functionality
21 than that of the original property.

22 (4) “Other biotechnology activities” means activities consisting
23 of the application of recombinant DNA technology to produce
24 commercial products, as well as activities regarding pharmaceutical
25 delivery systems designed to provide a measure of control over
26 the rate, duration, and site of pharmaceutical delivery.

27 (5) “Primarily” means tangible personal property used 50 percent
28 or more of the time in an activity described in subdivision (d).

29 (6) “Process” means the period beginning at the point at which
30 any raw materials are received by the qualified taxpayer and
31 introduced into the manufacturing, processing, refining, fabricating,
32 or recycling activity of the qualified person and ending at the point
33 at which the manufacturing, processing, refining, fabricating, or
34 recycling activity of the qualified taxpayer has altered tangible
35 personal property to its completed form, including packaging, if
36 required. Raw materials are considered to have been introduced
37 into the process when the raw materials are stored on the same
38 premises where the qualified taxpayer’s manufacturing, processing,
39 refining, fabricating, or recycling activity is conducted. Raw
40 materials that are stored on premises other than where the qualified

1 taxpayer's manufacturing, processing, refining, fabricating, or
2 recycling activity is conducted, are not considered to have been
3 introduced into the manufacturing, processing, refining, fabricating,
4 or recycling process.

5 (7) "Processing" means the physical application of the materials
6 and labor necessary to modify or change the characteristics of
7 property.

8 (8) "Refining" means the process of converting a natural
9 resource to an intermediate or finished product.

10 (9) "Research and development" means those activities that are
11 described in Section 174 of the Internal Revenue Code or in any
12 regulations thereunder.

13 (10) "Small business" means a qualified taxpayer that meets
14 any of the following requirements during the taxable year for which
15 the credit is allowed:

16 (A) Has gross receipts of less than fifty million dollars
17 (\$50,000,000).

18 (B) Has net assets of less than fifty million dollars
19 (\$50,000,000).

20 (C) Has a total credit of less than one million dollars
21 (\$1,000,000).

22 (D) Is engaged in biopharmaceutical activities or other
23 biotechnology activities and has not received regulatory approval
24 for any product from the United States Food and Drug
25 Administration.

26 (f) The credit allowed under subdivision (a) shall apply to
27 qualified property that is acquired by or subject to lease by a
28 qualified taxpayer, subject to the following special rules:

29 (1) A lessor of qualified property, irrespective of whether the
30 lessor is a qualified taxpayer, is not allowed the credit provided
31 under subdivision (a) with respect to any qualified property leased
32 to another qualified taxpayer.

33 (2) (A) For purposes of determining the qualified cost paid or
34 incurred by a lessee in any leasing transaction that is not treated
35 as a sale under Part 1 (commencing with Section 6001), the
36 following rules apply:

37 (i) Except as provided by subparagraph (C) of this paragraph,
38 paragraphs (1) and (3) of subdivision (b) do not apply.

39 (ii) Except as provided in subparagraph (B) and clause (iii), the
40 "qualified cost" upon which the lessee shall compute the credit

1 provided under this section shall be equal to the original cost to
2 the lessor (within the meaning of Section 24912) of the qualified
3 property that is the subject of the lease.

4 (iii) The requirement of paragraph (2) of subdivision (b) shall
5 be treated as satisfied only if the lessor has made a timely election
6 under either Section 6094.1 or subdivision (d) of Section 6244 and
7 has paid sales tax reimbursement or use tax measured by the
8 purchase price of the qualified property (within the meaning of
9 paragraph (5) of subdivision (g) of Section 6006). For purposes
10 of this subdivision, the amount of original cost to the lessor that
11 may be taken into account under clause (ii) may not exceed the
12 purchase price upon which sales tax reimbursement or use tax has
13 been paid under the preceding sentence.

14 (B) For purposes of applying subparagraph (A) only, the
15 following special rules shall apply:

16 (i) The original cost to the lessor of the qualified property shall
17 be reduced by the amount of any original cost of that property that
18 was taken into account by any predecessor lessee in computing
19 the credit allowable under this section.

20 (ii) Clause (i) does not apply in any case where the predecessor
21 lessee was required to recapture the credit provided under this
22 section pursuant to subdivision (g).

23 (iii) For purposes of this section only, in any case where a
24 successor lessor has acquired qualified property from a predecessor
25 lessor in a transaction not treated as a sale under Part 1
26 (commencing with Section 6001), the original cost to the successor
27 lessor of the qualified property shall be reduced by the amount of
28 the original cost of the qualified property that was taken into
29 account by any lessee of the predecessor lessor in computing the
30 credit allowable under this section.

31 (C) In determining the original cost of any qualified property
32 under this paragraph, only amounts paid or incurred by the lessor
33 on or after January 1, 2009, shall be taken into account.

34 (D) Notwithstanding subparagraph (A), in the case of any leasing
35 transaction for which the lessee is allowed the credit under this
36 section and thereafter the lessee (or any party related to the lessee
37 within the meaning of Section 267 or 318 of the Internal Revenue
38 Code) acquires the qualified property from the lessor (or any
39 successor lessor) within one year from the date the qualified
40 property is first used by the lessee under the terms of the lease, the

1 lessee's (or related party's) acquisition of the qualified property
2 from the lessor (or successor lessor) shall be treated as a disposition
3 by the lessee of the qualified property that was subject to the lease
4 under subdivision (g).

5 (3) For purposes of determining the qualified cost paid or
6 incurred by a lessee in any leasing transaction that is treated as a
7 sale under Part 1 (commencing with Section 6001), the following
8 rules apply:

9 (A) Paragraph (1) of subdivision (b) shall be applied by
10 substituting the term "purchase" for the term "construction,
11 reconstruction, or acquisition."

12 (B) Paragraph (3) of subdivision (b) shall apply.

13 (C) The requirement of paragraph (2) of subdivision (b) shall
14 be treated as satisfied at the time that either the lessor or the
15 qualified taxpayer pays sales or use tax under Part 1 (commencing
16 with Section 6001).

17 (4) (A) In the case of any leasing transaction described in
18 paragraph (2), the lessor shall provide a statement to the lessee
19 specifying the amount of the lessor's original cost of the qualified
20 property and the amount of that cost upon which a sales or use tax
21 was paid within 45 days after the close of the lessee's taxable year
22 in which the credit is allowable to the lessee under this section.

23 (B) The statement required under subparagraph (A) shall be
24 made available to the Franchise Tax Board upon request.

25 (g) No credit is allowed if the qualified property is removed
26 from the state, is disposed of to an unrelated party, or is used for
27 any purpose not qualifying for the credit provided in this section
28 in the same taxable year in which the qualified property is first
29 placed in service in this state. If any qualified property for which
30 a credit is allowed pursuant to this section is thereafter removed
31 from this state, disposed of to an unrelated party, or used for any
32 purpose not qualifying for the credit provided in this section within
33 one year from the date the qualified property is first placed in
34 service in this state, the amount of the credit allowed by this section
35 for that qualified property shall be recaptured by adding that credit
36 amount to the net tax of the qualified taxpayer for the taxable year
37 in which the qualified property is disposed of, removed, or put to
38 an ineligible use. The sale of stock for which an election was made
39 or deemed to have been made pursuant to Section 338(g) or
40 338(h)(10) of the Internal Revenue Code may not be treated as a

1 disposition of qualified property to an unrelated party for purposes
2 of this subdivision.

3 (h) In the case where the credit allowed by this section exceeds
4 the “tax,” the excess may be carried over to reduce the “tax” in
5 the following year, and succeeding years as follows:

6 (1) Except as provided in paragraph (2), for the seven succeeding
7 years if necessary, until the credit is exhausted.

8 (2) In the case of a small business, for the nine succeeding years,
9 if necessary, until the credit is exhausted.

10 SEC. 3. This act provides for a tax levy within the meaning of
11 Article IV of the Constitution and shall go into immediate effect.